

### **REMARKS**

Claims 1-24 are pending in the application. Claims 1-21 are rejected. Claims 22-24 are withdrawn without prejudice. Claims 1 and 16 are amended. Claims 3, 10 and 11 are canceled. Applicants thank the Examiner for accepting the corrections made.

#### **Information Disclosure Statement:**

Applicants thank the Examiner for indicating that the references cited in the present specification have not been considered. Applicants respectfully submit that the present invention distinguishes from the references cited in the specification, and will submit the references in a separate Information Disclosure Statement, if appropriate.

#### **Objection to the Drawings:**

The grounds of objection indicate that Figure 2A contradicts Figures 1A and 1B. Occlusive device 50 is an element of occlusive system 10, but occlusive device 50, fastener 30, and tip 40 are separate elements that may be used in multiple combinations depending on the particular embodiment of the present invention. As described in at least paragraphs [0039] to [0048] and Figures 1 to 5, occlusive device 50 may be used in cooperation with fastener 30; occlusive device 50 may be used in cooperation with fastener 30 and further comprising fastener tip 40 in communication with fastener 30; occlusive device 50 may be disposed within or adjacent to fastener 30; and fastener 30 may be in cooperation with fastener tip 40 and occlusive device 50 may be in cooperation with fastener 30 or fastener tip 40. No amendment to the drawings is thought necessary. Applicant respectfully requests reconsideration and withdraw of the objection.

**35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) Rejections**

Claims 1-5, 10-18 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Ho et al. (2001/0047181). Claims 6-9, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ho et al.

Claim 1 recites, *inter alia*, “an occlusive device having a first substantially closed position and a second substantially open position in cooperation with the fastener that occludes blood flow in the vessel during attachment of the surgical component; and a penetration apparatus in communication with the fastener, wherein the occlusive device is maintained in the second substantially open position by the presence of the penetration apparatus. The present invention, as recited in amended claim 1, in general, relates to a surgical system including a fastener operable to attach a surgical component to a vessel wall, and an occlusive device in cooperation with the fastener that occludes blood flow in the vessel during attachment of the surgical component. The device may be used, for example, in repairing an aortic aneurysm without the attendant risks of intra-abdominal surgical intervention, by selectively reducing blood loss from a vessel during attachment of the surgical component, such as a prosthetic graft, to the vessel wall.

The grounds of rejection allege that the fastener and occlusive device of the present invention are disclosed by Ho et al., and in particular, release mechanism 104 as the “fastener” and fastener 210 as the “occlusive device.” The grounds of rejection refer to these elements as shown in Figures 1 and 2 of Ho et al. Applicants respectfully traverse this rejection.

Ho et al. does not teach, suggest or disclose an occlusive device having a first substantially closed position and a second substantially open position in cooperation with the fastener that occludes blood flow in the vessel during attachment of the surgical component and a penetration apparatus in communication with the fastener, wherein the occlusive device is maintained in the second substantially open position by the presence of the penetration apparatus.

Applicants respectfully submit that release mechanism 104 is not a “fastener” as in the present invention. In the present invention, the fastener as described in the specification and understood by one of ordinary skill in the art attaches a surgical component to a vessel wall. Claims 1 and 16 in the present application, as appropriate, have been amended to more clearly define this distinction

Further, Applicants respectfully request that the Examiner provide some basis in a reference for the assertion that the occlusive device may include a band, ribbon, valve, or flap. Applicants respectfully submit that the 35 U.S.C. 103(a) rejection appears to be based on improper hindsight in view of Applicants’ own disclosure.

Accordingly, Applicants respectfully submit that the claims distinguish from Ho et al.

**CONCLUSION**

In view of the foregoing amendments and remarks, Applicants respectfully submit that the claims of the present invention define subject matter patentable over the references cited by the Office and that the application is in condition for allowance. Should the Office believe that anything further is desirable to place the application in better condition for allowance, the Office is invited to contact Applicants' undersigned attorney at the below listed telephone number.

The Commissioner is hereby authorized to charge any deficiency or credit any overpayment to deposit account number 03-2469. Moreover, if the deposit account contains insufficient funds, the Commissioner is hereby invited to contact Applicant's undersigned representative to arrange payment.

Respectfully submitted,



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